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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent

v.

THURMAN HOWARD LIGONS, JR.,

Defendant and Appellant.

F058762

(Super. Ct. Nos. F06909107 &
F09900756)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James M. Petrucelli, Judge.

Marsanne Weese, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, David A. Rhodes and Janis Shank McLean, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Hill, P.J., Wiseman, J. and Cornell, J.

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Appellant Thurman Ligon, Jr. appeals from an order of the Fresno County Superior Court revoking his probation and sentencing him to prison for three years. Appellant contends he was denied due process because he “was not given sufficient notice as to which probation condition or conditions he had violated.” We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2007, appellant pled guilty, in case No. F06909107, to one count of embezzlement and one count of grand theft. The trial court suspended imposition of sentence and placed appellant on two years of formal probation.

On February 9, 2009, appellant was charged, in case No. F09900756, with attempted first degree residential burglary (Pen. Code, §§ 664, 459, 460, subd. (a)).

On March 2, 2009, the trial court summarily revoked appellant’s probation in case No. F06909107. Appellant denied violating probation and a formal hearing was set.

On August 27, 2009, a jury found appellant not guilty of the attempted burglary charged in case No. F09900756.

On September 10, 2009, the probation department filed a probation hearing report alleging that appellant violated his probation in case No. F06909107 by “Fail[ing] to obey all laws/new violations.” The allegation referred specifically to the charge of attempted residential burglary (“Ct 1: PC 664/459/460(a)”) in case No. F09900756.

At the formal probation revocation hearing on September 10, 2009, the issue was argued and decided as follows:

“THE COURT: All right. This is the time and date set for the violation of probation hearing. It has been stipulated that the Court hearing the testimony at the trial for Mr. Ligon could use the testimony that the Court received during that trial as a basis for the hearing. Having said that, I do note for the record that Mr. Ligon was found not guilty by the jury....

☐ ... ☐

“[DEFENSE COUNSEL]: ...Your Honor, Mr. Ligons was offered a deal that he did plead and have a chance to get out in a short amount of time that was guaranteed, but he chose not to do that because he’s asserted that he is not guilty, and he was found not guilty by a jury. And we’d ask the Court to consider that in this violation of probation.

“Also, this is the first alleged violation of probation on the case. It will make a little more sense, but he did complete— almost completed his probationary term without any violations alleged; so he was doing something right. I think the real issue is that Mr. Ligons was found not guilty by a jury trial. And I understand that’s to a different standard as the trier of fact is on the violation of probation. But we’d ask the Court to interpret that and that the jury’s request that Mr. Ligons be exonerated on this case and be free of any other ramifications from his trial. He went to trial and was found not guilty. [¶] ... [¶]

“[THE PROSECUTOR]: ...There were multiple— evidence of multiple law violations brought out at trial, including the main charge, the attempted residential burglary. We’ve heard evidence that he admitted to being at the house and attempted to pry off the windows. There was also evidence that he ran from multiple police officers after given lawful commands to stop. So we have proof by a preponderance of multiple law violations. [¶] ... [¶]

“THE COURT: All right. Then the Court does find by a preponderance of the evidence that there is a violation of probation. The Court heard the testimony at the trial, and I believe that the violation— a number of violations have occurred, including not following the lawful directions of police officers, and the Court does find a violation of probation.”

The trial court then sentenced appellant to a prison term of three years.

DISCUSSION

Appellant now contends:

“The issue with the probation revocation is that appellant was not notified prior to the hearing of which probation conditions he violated. Appellant was notified on September 10, 2009— the date of the probation hearing— that his alleged probation violation was attempted burglary. However, when revoking appellant’s probation, the court never mentioned the attempted burglary. Instead, the court gave a vague finding that ‘a number of violations have occurred, including not following the lawful directions of police officers, and the Court does find a violation of probation.’.... Thus,

given the lack of notice and a vague finding, appellant still does not know how he violated his probation. Therefore, appellant was not afforded the protections provided in the Due Process Clause of the Fourteenth Amendment.”

Written notice of a probation violation is constitutionally mandated. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489; *People v. Vickers* (1972) 8 Cal.3d 451, 457-460.) In the context of a revocation of probation, due process is satisfied when the probationer receives written notice of the claimed probation violations, disclosure of the evidence against him, an opportunity to be heard and present and confront witnesses, a neutral hearing body, and a written statement by the factfinder as to the evidence relied on and the reasons for revoking probation. (*Black v. Romano* (1985) 471 U.S. 606, 611-612; *People v. Rodriguez* (1990) 51 Cal.3d 437, 440; Pen. Code, § 1203.2, subd. (b).)

There is a question of whether appellant’s claim is even cognizable on appeal because appellant failed to object to the purported due process violation in the trial court. (See *People v. Whisenand* (1995) 37 Cal.App.4th 1383, 1395-1396; *People v. Hawkins* (1975) 44 Cal.App.3d 958, 967.) However, assuming without deciding that appellant has not waived or forfeited his claim, we conclude the claim fails on the merits.

Here, the September 10, 2009, probation hearing report provided appellant with sufficient notice to prepare a defense. (See *People v. Mosley* (1988) 198 Cal.App.3d 1167, 1174 [notice must be sufficient to allow defendant to prepare and defend against alleged violation].) The report clearly indicated that the alleged probation violation was appellant’s failure to obey all laws and/or commission of new law violations, referring specifically to the charge of residential burglary in case No. F09900756. At the probation revocation hearing, the parties stipulated that the trial court could consider the evidence presented at appellant’s jury trial in that case to determine whether appellant violated his probation in case F06909107. Appellant clearly had actual notice of the allegations against him and a meaningful opportunity both to prepare for the hearing and to be heard.

Although he does not say it in so many words, appellant appears to be arguing that he was given insufficient notice of one of the grounds upon which the trial court could find appellant violated probation by not obeying the law, namely, that appellant failed to follow the lawful orders of police officers in connection with the attempted burglary. Even though this ground was not specifically mentioned in the probation hearing report, the trial court's comments indicate that it was not relying solely on this ground in finding that appellant violated his probation; rather, the trial court's comments indicate that it agreed with the prosecutor's argument that the evidence presented at trial supported the charge of attempted burglary and its attendant circumstances (i.e., running from police afterwards) by a preponderance of the evidence, the standard relevant to probation revocations, notwithstanding appellant's acquittal by a jury on the charge. On this record, we disagree with appellant's claim that it was not clear upon what ground the court found he violated his probation or that he was given insufficient notice of the claimed probation violation.¹

In short, there was no due process violation.

DISPOSITION

The judgment is affirmed.

¹ We have reviewed the cases relied on by appellant and find this case is distinguishable. (See *People v. Mosley*, *supra*, 198 Cal.App.3d 1167 [defendant alleged to have violated one term of probation (to refrain from criminal activity) but found by court to have violated entirely different one (to abstain from using alcohol)]; see also *In re Duran* (1974) 38 Cal.App.3d 632 [court revoked probation after finding defendant failed to obtain a psychiatric report, which was not a term of defendant's probation; defendant also given no written notice of any claimed violations prior to hearing and had complied with terms of probation].)